

July 9, 2004

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**ORDER GRANTING MOTION TO DISMISS, DENYING APPEALS OF DETERMINATION OF  
ENVIRONMENTAL NON-SIGNIFICANCE AND CONDITIONAL USE PERMIT, AND  
AFFIRMING DECISION GRANTING CONDITIONAL USE PERMIT**

SUBJECT: Department of Development and Environmental Services file no. **L02CU034**

**T-MOBILE - VASHON**

Appeal of Threshold Determination and  
Conditional Use Permit Appeal

Location: 27118 Wax Orchard Road, Vashon Island

Appellants: Phillip Hanson, Anne Herfindahl & Anne Woodward, *represented by*  
**Kirk Wines**, Attorney  
210 Crockett Street  
Seattle, Washington 98109  
Telephone: (206) 301-9558  
Facsimile: (206) 213-0021

Respondent: T-Mobile USA, Inc., *represented by*  
**Molly Lawrence**, Attorney  
Buck & Gordon, LLP  
2025 1st Avenue, Suite 500  
Seattle, Washington 98121  
Telephone: (206) 382-9540  
Facsimile: (206) 626-0675

by King County: Department of Development and Environmental Services, *represented*  
**Greg Borba and Karen Scharer**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7118 and 296-7114  
Facsimile: (206) 296-6613

**SUMMARY OF DECISION:**

Department's Preliminary Recommendation	Issue MDNS and Approve Application, Subject to Conditions
Department's Final Recommendation	Issue MDNS and Approve Application, Subject to Conditions
Examiner's Decision:	Deny the Appeals and Affirm Conditional Use Permit, Subject to Conditions

**EXAMINER PROCEEDINGS:**

Pre-Hearing Conference and Hearing on Motions:	February 9, 2004
Hearing Opened:	June 22, 2004
Hearing Closed:	June 22, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**ISSUES ADDRESSED:**

- Monopole extension (height increase)
- Co-location of minor communication facilities

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

1. On November 7, 2003 the Department of Development and Environmental Services issued a determination of non-significance and a report and decision that approved, subject to conditions, a conditional use permit for a 9-foot extension to a 120 foot tall monopole minor communication facility located at 27118 Wax Orchard Road, Vashon Island, King County, Washington. The Department's report and decision is exhibit no. 2 in the hearing record of this proceeding. The determination of environmental non-significance is exhibit no. 4.
2. On November 20, 2003 an appeal of the determination of non-significance and conditional use permit was filed by Phillip Hanson, Anne Herfindahl and Anne Woodward. An appeal statement was filed on behalf of the Appellants on December 1, 2003.
3. The facts set forth in the November 7, 2003 Determination of Environmental Non-significance (exhibit no. 4), Conditional Use Permit Report and Decision (exhibit no. 2), and Supplemental Report to the Hearing Examiner for the June 22, 2004 Appeal Hearing (exhibit no. 3) are correct. Those facts are incorporated herein by this reference.

4. The Appellants' evidence does not show that the proposed 9 foot extension to the existing minor communication facility on the subject property would have a probable significant adverse impact upon the environment, or that the proposed extension and the addition of antennae proposed by the Applicant fail to meet any of the criteria for the issuance of a conditional use permit.

#### CONCLUSIONS:

Based upon the foregoing facts, the Examiner concludes:

1. The 9-foot extension of the existing monopole minor communication facility, to enable collocation of T-Mobile antennae, will have only a slight visual impact on the environment. The proposed extension and collocation are consistent with King County code criteria for the granting of a conditional use permit and for collocation of minor communication facilities on an existing structure.
2. The appeals by Phillip Hanson, Anne Herfindahl and Anne Woodward of the November 7, 2003 Determination of Environmental Nonsignificance and Decision Approving the Conditional Use Permit, subject to conditions, should be dismissed. The said Conditional Use Permit should be affirmed.

#### DECISION:

The appeals of the November 7, 2003 Determination of Environmental Nonsignificance and of the Report and Decision Issuing a Conditional Use Permit, subject to conditions, are DENIED. The November 7, 2003, Conditional Use Permit is AFFIRMED.

ORDERED this 9th day of July, 2004.

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James N. O'Connor  
King County Hearing Examiner *pro tem*

TRANSMITTED this 9th day of July, 2004, to the following parties and interested persons of record:

Steve Caplan  
T-Mobile USA, Inc.  
19807 North Creek Pkwy N  
Bothell WA 98011

Allen Fahnestock  
T-Mobile Wireless  
19807 N. Crk. Pkwy. N.  
Bothell WA 98011

Phillip Hanson  
27115 Wax Orchard Rd.  
Vashon WA 98070

Anne Herfindahl  
27115 Wax Orchard Rd.  
Vashon WA 98070

Molly Lawrence  
Buck & Gordon, LLP  
2025 1st Ave., Ste. 500  
Seattle WA 98121

Kirk R. Wines  
Attorney At Law  
210 Crockett Street  
Seattle WA 98109

Anne Woodward  
13122 SW 273rd Street  
Vashon Island WA 98070

Greg Borba  
DDES/LUSD  
MS OAK-DE-0100

Karen Scharer  
DDES/LUSD  
Current Planning  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

The action of the hearing examiner on this matter shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the issuance of this decision. The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.

#### MINUTES OF THE JUNE 22, 2004, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02CU034.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer and Greg Borba, representing the Department; Kirk Wines, representing the Appellant; Molly Lawrence, representing the Respondent, and Michael Hanson.

The following Exhibits were offered and entered into the record:

- |                |   |
|----------------|---|
| Exhibit No. 1  | DDES file no. L02CU034 together w/ L03AP018   |
| Exhibit No. 2  | DDES CUP Report and Decision for L02CU034, dated 11-7-03  |
| Exhibit No. 3  | DDES Supplemental Report to the Hearing Examiner, dated June 7, 2004  |
| Exhibit No. 4  | SEPA Determination of Non-Significance, dated 11-7-03   |
| Exhibit No. 5  | a. Appeal Notice received 11/20/03<br>b. Appeal Statement received 12/01/2003                                     |
| Exhibit No. 6  | Prehearing Order dated 2/12/04  |
| Exhibit No. 7  | King County DDES Response to Appellant's Request for Interrogatories and Requests for Production dated 3/12/04    |
| Exhibit No. 8  | T-Mobile Response to Appellant's Request for Interrogatories and Requests for Production dated 3/12/04            |
| Exhibit No. 9  | Appellants Response to T-Mobile's Request for Interrogatories and Requests for Production dated 3/19/04           |
| Exhibit No. 10 | King County DDES Response to Appellant's Discovery Request #1, dated 4/6/04                                       |
| Exhibit No. 11 | T-Mobile Partial Motion to Dismiss and/or Summary Judgment dated 4/22/04  |
| Exhibit No. 12 | Appellant's Response to T-Mobile Partial Motion to Dismiss and/or Summary Judgment dated 5/3/04                   |
| Exhibit No. 13 | T-Mobile Reply to Appellant's Response T-Mobile Partial Motion to Dismiss and/or Summary Judgment dated 5/10/04   |
| Exhibit No. 14 | T-Mobile Supplemental Information dated 5/12/04   |
| Exhibit No. 15 | E-mail from Meg McDonald, 24107 Wax Orchard Road SW, Vashon Is. WA 98070,<br><i>Not admitted into the record</i>  |
| Exhibit No. 16 | E-mail from Mike McDonald, 24107 Wax Orchard Road SW, Vashon Is. WA 98070,<br><i>Not admitted into the record</i> |
| Exhibit No. 17 | CUP Application, received 10/21/2002 (File Ex. D-3) w/ SEPA Checklist, received 10/21/2002 (File Ex. D-5)         |
| Exhibit No. 18 | Revised Site Plan by applicant, received July 3, 2003 (File Ex. D-7)  |
| Exhibit No. 19 | Ltr. From Bill Sanders, Radio Frequency (RF) Engineer, T-Mobile received July 3, 2003 (File Ex. D-19)             |

- Exhibit No. 20 Tree height survey, received July 3, 2003 (File Ex. D-20)
- Exhibit No. 21 Photo Sims of tower w/map showing where photo's taken, received July 3, 2003 (File Ex. D-21)
- Exhibit No. 22 Applicant's review of Comprehensive Plan support, received July 3, 2003 (File Ex. D-22)
- Exhibit No. 23 Noise Report / SSA Acoustics dated June 24, 2003, received July 3, 2003 (File Ex. D-23)
- Exhibit No. 24 Attachment A to Tower CUP Application (File Ex. D-24 )
- Exhibit No. 25 NIER & Interference information prepared by Hatfield & Dawson Consulting Engineers, dated June 27, 2003 (File Ex. D-25)
- Exhibit No. 26 Cover Ltr. From Angela Brooks, received Sept. 4, 2003 (File Ex. D- 26)
- Exhibit No. 27 Revised ltr. From Bill Sanders, Radio Frequency (RF) Engineer, T-Mobile received Sept. 4, 2003 (File Ex. D-27)
- Exhibit No. 28 CUP Supplemental Justification – KCC 21A.44.040, received Sept. 4, 2003 (File Ex. D-28)
- Exhibit No. 29 Minutes of the Nov. 7, 2002 Public Meeting received Sept. 4, 2003 Including written questions of Phil Hansen. (File Ex. D-29)
- Exhibit No. 30 D sq. Energy Systems Inc. ltr. Regarding generator information, received Sept. 4, 2003 (File Ex. D-30)
- Exhibit No. 31 Revised Noise Report by SSA Acoustics dated July 22, 2003, received Sept. 4, 2003 (File Ex. D- 31)
- Exhibit No. 32 Response to the Kirk Wines Letter of 12/26/02 by Angela Brooks, T-Mobile, received Sept. 4, 2003 (File Ex. D-32)
- Exhibit No. 33 Letter from Kirk Wines, P.S., dated 12/26/02, comments & questions (File Ex. 1)
- Exhibit No. 34 Curt Horner, KCHealth Dept. memo of 9/17/03 (File Ex. 7)
- Exhibit No. 35 Joe Blaschka, Jr., P.E., Adcomm Engineering Company, Review of Technical Justification for Height, dated October 20, 2003 (File Ex. 8)
- Exhibit No. 36 Examiner Decision on L96AC028 (File Ex. # 9)
- Exhibit No. 37 E-mail from Julie Shannon, 13225 SW 240<sup>th</sup> St., Vashon, WA 98070, *Not Admitted into the record*
- Exhibit No. 38 Revised list of Hearing Exhibits (Revision date of June 21, 2004)
- Exhibit No. 39 Senate Bill report SB 6578